IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.08.2007

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

W.P.No.21611 of 2006

K.A.Shanmugasundaram ... Petitioner

Vs.

The Director of School Education,
Kuralagam, Madras-108. ... Respondent

This petition came to be numbered by transfer of O.A.No.1840 of 1994 on the file of the Tamil Nadu Administrative Tribunal praying for the issuance of a Writ of Certiorarified Mandamus, to call for records relating to the proceedings of the Director of Rural Development, Madras No.326/93/A1, dated 21.01.1994 (A-7), quash the same and consequently, declare that the date of birth of the petitioner be 18.12.1936, instead of 17.01.1936 in his Service Record and to direct the Respondent to continue the petitioner in service upto 31.12.1994, namely, upto the age of superannuating, pursuant to the revised date of birth of 18.12.1936, with all attendant, service and monetary benefits.

For Petitioner : Mr.K.V.Srinivasaraghavan

For Respondents : Mrs.Lita Srinivasan,
Govt., Advocate

ORDER
The petitioner, a retired Block Development Officer in Rural Development Department, has challenged the order of rejection for alteration of Date of Birth. Earlier, the petitioner had filed a suit in the year 1986 before the District Munsif's Court, Tirunelveli for alteration of Date of Birth from 17.01.1936 to 18.12.1936. When the suit was ripe for trial, the Tamil Nadu Administrative Tribunal was constituted under Article 323-A of the Constitution of India and therefore, the suit came to be dismissed with liberty to file an application before the Tamil Nadu State Administrative Tribunal within two months from the date of dismissal of the suit. Thereafter, the petitioner filed O.A.No.1228 of 1991 before the Tamil Nadu State Administrative Tribunal for the same relief and the Tribunal, by an order dated 08.04.1991, directed the petitioner to submit an application before the appropriate authority for alteration of Date of Birth in his Service Register with reference to Rule 49 of the General Rules.

2. Pursuant to the order of the Tribunal, the petitioner submitted an application to the District Collector of Tirunelveli on 27.10.1992 along with relevant documents, such as Birth extract, Statements of two credible persons and S.S.L.C. Book etc. The District Collector, Tirunelveli, by his letter dated 18.12.1992, forwarded all the papers to the Commissioner for Revenue Administration for enquiry and report. On 26.04.1993, the petitioner, his brother and sister and the persons named in the application were enquired by the Sub Collector, Tirunelveli and he sent a report dated 07.10.1993 to the Commissioner of Revenue Administration, stating that on verification of the

original birth register of Tirunelveli Municipality, a child was born to the parents of the petitioner on 18.12.1936. While the petitioner was expecting favourable orders, to his shock and surprise, the respondent by his proceedings dated 21.01.1994 rejecting the request of the petitioner for alteration of Date of Birth. Aggrieved by the order of the respondent, the petitioner has preferred Original Application in O.A.No.1840 of 1994 on the file of the Tamil Nadu Administrative Tribunal, which has been transferred and renumbered as present Writ Petition.

3. The respondent in his counter affidavit has submitted that in O.A.No.1228 of 1991 filed by the petitioner for alteration of Date of Birth, the Tribunal, has directed the petitioner to prefer an application before the appropriate authority for the same relief and on receipt of the application, the concerned authority should dispose of the same on merits and in accordance with the Rule provision, within three months thereafter. Pursuant to the direction of the Tribunal, the petitioner has filed an application before the District Collector, Tirunelveli District on 21.10.1992 along with necessary documents. The said application was forwarded to the Special Commissioner & Commissioner for Revenue Administration for enquiry and report. An enquiry was conducted by the Sub-Collector, Tirunelveli. But the request of the petitioner for alteration of Date of Birth was rejected by the respondent as there was no concrete evidence to prove that the Date of Birth entered in the Birth extract relates to the petitioner. It was further observed that there was a possibility for birth of child between 17.01.36 to 18.12.36, as there was 12 months time gap between the disputed dates. The birth of the elder brother and younger sister were not registered in the birth register. There is a possibility that the birth of the petitioner was also not registered, as in the case of others. It is further submitted that in the birth extract of the petitioner's younger brother, the name is mentioned as "Muthiah", whereas, during enquiry, the petitioner and his sister have stated that the name of the child as "Muthukumarasamy". Hence, the enquiry officer has raised a doubt regarding their statements. Similarly, the enquiry officer had raised a doubt in the name of the petitioner's younger sister also. It is further submitted that as the petitioner has failed to prove that he was born on 18.12.1936 by producing valid documents, the impugned order, passed after providing due opportunity to the petitioner does not call for any interference.

4. Placing reliance on the decision in State of Orissa v. Dr.(Miss) Binapani Dei & Ors., reported in 1967(2) SCR 625, learned counsel for the petitioner submitted that before rejecting the application for alteration of Date of Birth, the respondent ought to have given a fair opportunity to meet the case of the petitioner and failure to do so, amounts to violation of the principles of natural justice. He further submitted that when the application for alteration of Date of Birth was filed in time, it is not open to the respondent to take a defence of limitation.

5. He has further submitted that merely because, the petitioner had attained the age of superannuation during the pendency of the suit or any other legal proceedings, the Writ Petition cannot be dismissed as infructuous. In this context, learned counsel for the petitioner, placed reliance on the decisions in Government of Tamil Nadu v. S.Marimuthu reported in 2003(2) CTC 103 and Ashgar Khan v. Union of India reported in 1998 AIR SCW 4044.

6. Heard Mr.K.V.Srinivasaraghavan, learned counsel for the petitioner as well as Mrs.Lita Srinivasan, learned Government Advocate appearing for the respondent.

7. Before adverting to the facts of the case, it would be relevant to extract some of the decisions of the Hon'ble Supreme Court on the question of alteration of date of birth.

8. The Supreme Court in Secretary & Commissioner v. R.Kirubakaran reported in 1994 Supp. (1) SCC 155, in Parargraph 7, held as follows:

"unless a clear case, on the basis of materials which can be held to be conclusive in nature, is made out by the respondent, the Court or the tribunal should not issue a direction, on the basis of materials which make such claim only plausible. Before any such direction is issued, the Court or the tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within the time fixed by any rule or order."

9. In State of Tamil Nadu v. T.V.Venugopalan reported in 1994 (6) SCC 302, the Supreme Court, in paragraph 7, held as follows:
"The evidence is neither unimpeachable nor irrefutable. The Tribunal in its judicial review is not justified in trenching into the field of appreciation of evidence and circumstances in its evaluation to reach a conclusion on merits as it is not a Court of appeal."

10. In Commr. of Police v. Bhagwan V. Lahane reported in 1997 (1) SCC 247, the Supreme Court in Paragraph 6, held as follows:
"The extract from the birth register produced by him along with his representation being inconsistent with the School Leaving Certificate produced by him earlier, he ought to have proved to the satisfaction of the competent authority that he was given a name before or soon after his birth and that his name was entered in the birth register at the time of registration of his birth."

11. In G.M.Bharat Coking Coal Ltd., v. Shib Kumar Dushad, reported in 2000 (8) SCC 696, the Supreme Court considered the scope of judicial review in matters relating to alteration of Date of Birth. After analysing various decisions on this point, the Apex Court held that where the question regarding correctness of date of birth as entered in service record is raised by the employee long after his joining the service and the employer has decided the question, following the procedure prescribed by statute, statutory rules or instructions, and in the absence of any arithmetical or typographical error apparent on the face of the record, the High Court should not interfere with such decision of the employer in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India.

12. In a recent decision in State of Gujarat & others v. Vali Mohmed Dosabhai Sindhi reported in 2007 (1) LW 121, again the Supreme Court, at Paragraph 10, held as follows:
"An application for correction of the date of birth should not be dealt with by the Courts, Tribunal or the High Court keeping in view only the public servant concerned. It need not be pointed out that ny such direction for correction of the date of birth of the public servant concerned has a chain reaction, inasmuch as others waiting for years, below him for their respective promotions are affected in this process. Some are likely to suffer irreparable injury, inasmuch as, because of the correction of the date of birth, the officer concerned, continues in office, in some cases for years, within which time many officers who are below him in seniority waiting for their promotion, may loose the promotion for ever."

In the same Paragraph, the Supreme Court further observed that,
"As such, unless a clear case on the basis of materials which can be held to be conclusive in nature, is made out by the respondent and that too within a reasonable time as provided in the rules governing the service, the Court or the Tribunal should not issue a direction or make a declaration on the basis of materials which make such claim only plausible. Before any such direction is issued or declaration made, the Court or the Tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within the time fixed by any rule or order. If no rule or order has been framed or made, prescribing the period within which such application has to be filed, then such application must be within atleast a reasonable time. The applicant has to produce

the evidence in support of such claim, which may amount to irrefutable proof relating to his date of birth. Whenever any such question arises, the onus is on the applicant, to prove about the wrong recording of his date of birth, in his service book."
"The Court or the Tribunal must, therefore, be slow in granting an interim relief or continuation in service, unless prima facie evidence of unimpeachable character is produced because if the public servant succeeds, he can always be compensated, but if he fails, he would have enjoyed undeserved benefit of extended service and thereby caused injustice to his immediate junior."

13. In State of Orissa v. Dr.(Miss) Binapani Dei & Ors., reported in 1967(2) SCR 625, deals with the case where on the basis of an anonymous letter addressed to the Accountant General that the employee has mis-stated her age when she was admitted to service of the State. An enquiry was conducted and the employee was compulsorily retired without furnishing the copy of the report and evidence, which was collected by the authority. The Supreme Court held that without providing the copy of the report and the details of evidence collected against the employee amount to violation of Article 311 of the Constitution of India. The case relied on by the learned counsel for the petitioner relates to a case of compulsory retirement and the same is not applicable to the present case, where the authority has conducted an enquiry, where the petitioner's brother and sister have participated in the enquiry.

14. In the case on hand, the Government have considered the case of the petitioner and followed the procedure of conducting an enquiry into the dispute with regard to the age of the petitioner, given sufficient opportunity to the petitioner to prove his case. On enquiry, the Government found that the petitioner has not submitted any clinching evidence and irrefutable materials to corroborate the birth extract. Unless clear materials are produced before the competent authority for effecting alteration of date of birth, this Court cannot sit in appeal over the decision of the fact finding authority. Therefore, this Court in exercise of powers under Article 226 of the Constitution of India cannot grant any declaratory relief on the basis of materials found not supportive of the petitioner's claim. A finding of fact can be reverse, if it is perverse or if the authority had failed to consider the material evidence for arriving at proper conclusion. In the case on hand, I do not find that the findings arrived at by the respondents can be termed as perverse and therefore, it does not warrant any interference.

15. The decisions relied on by the learned counsel for the petitioner in Government of Tamil Nadu v. S.Marimuthu reported in 2003(2) CTC 103 and State of Orissa v. Dr.(Miss) Binapani Dei & Ors., reported in 1967(2) SCR 625 are not applicable to the facts of this Case, because the Writ Petition is being disposed of on merits and not as infractuous. There is no illegality or irregularity in the procedure followed by the authorities.

16. In the result, the Writ Petition is dismissed. No costs.

23.08.2007
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S. MANIKUMAR, J.

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To
The Director of School Education,
Kuralagam, Madras-108.

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